



Robert K. Malone  
Director

Gibbons P.C.  
One Gateway Center  
Newark, NJ 07102-5310  
Direct: 973-596-4533 Fax: 973-639-6357  
rmalone@gibbonslaw.com

August 22, 2022

Honorable Michael B. Kaplan  
United States Bankruptcy Court  
for the District of New Jersey  
Clarkson S. Fisher U.S. Courthouse  
402 East State Street  
Trenton, New Jersey 08608

Re: LTL Management LLC, Case No.21-30589 (MBK)

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LTL Management LLC v. State of New Mexico and  
State of Mississippi, Adv. Pro. No. 22-01231 (MBK)

Dear Judge Kaplan:

Please be advised that Gibbons P.C. serves as bankruptcy counsel to the States of New Mexico and Mississippi in the above-caption adversary proceeding. As the Court is aware, tomorrow is the return date for the hearing on the Motion by LTL Management, LLC (“LTL” or the Debtor”) for a Preliminary Injunction.

On Friday, August 19<sup>th</sup>, for the first time we were advised by the Debtor’s counsel that they intended to enter the Declaration of John Kim into evidence at the August 23<sup>rd</sup> hearing. After consultation with our client, we advised Mr. Prieto of Jones Day as lead counsel for the Debtor that we intended to object not only to the introduction of Mr. Kim’s Declaration into evidence, but to calling him as a witness tomorrow to testify at what has not been scheduled as an evidentiary hearing.

Rule 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) applies to the instant matter. In particular, Bankruptcy Rule 9014 (e) states as follows:

**Rule 9014(e): *Attendance of witnesses.* The court shall provide procedures that enable parties to ascertain at a reasonable time before any scheduled hearing whether the hearing will be an evidentiary hearing at which witnesses may testify.**

Prior to our involvement, on July 20, 2022, this Court entered the *Consent Order Regarding (I) Briefing Schedule for Debtor’s Motion for an Order Preliminarily Enjoining the Prosecution Enjoining the Prosecution of the New Mexico and Mississippi State Actions, (II) Agreed Stay of Such Actions and (III) Extension of the Time for Defendants to Respond to the Complaint* (the “**Scheduling Order**”) (Adv. Dkt. #15) in this adversary case. While the

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Scheduling Order is quite comprehensive, nowhere is there any reference to the August 23, 2022 hearing being an evidentiary hearing. In fact, on August 15, 2022, the Court entered a text order scheduling the hearing on August 23<sup>rd</sup> to be via Zoom. Simply stated, the Debtor had an opportunity to ask for an evidentiary hearing where they could present testimony, including through a Declaration, subject to cross examination.

While we remain fully prepared to proceed with oral argument tomorrow if it was *not* going to be an evidentiary hearing where Declarations or testimony would be considered, after speaking with Mr. Prieto who insists that he wants to proceed with presenting evidence, we would agree if there is going to be an evidentiary hearing that it would make sense to continue tomorrow's hearing to the possibly the next Omnibus Date of September 14<sup>th</sup> or preferably a special date in September so as to afford the Parties an opportunity to conduct discovery. Although our clients will agree to a such a continuance, they also believe that since it is now an evidentiary hearing, it should be accorded its own special hearing so there is sufficient time for the hearing to proceed. Nevertheless, this continuance of the hearing is: (a) without prejudice to a further continuance if discovery cannot be completed prior to the date scheduled by the Court and (b) that the temporary stay previously agreed to by the parties shall continue until the scheduled hearing on the Motion for a Preliminary Injunction.

Should the Court have any questions regarding the foregoing or wish the parties to appear tomorrow at a status hearing, etc., please advise us how you wish for the parties to proceed

Respectfully yours,

*/s/ Robert K. Malone*

Robert K. Malone  
Director

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cc: Dan Prieto, Esq.  
All Counsel of Record in Adv. Proceeding